

ACCESS TO AND USE OF INFORMATION FROM THE LAW ENFORCEMENT INFORMATION NETWORK (LEIN)

BACKGROUND

The Michigan Law Enforcement Information Network (LEIN) is a computerized information system operational twenty-four hours per day, seven days per week and is restricted to authorized criminal justice agencies. The enabling legislation that authorizes LEIN is Act 263 of the Public Acts of 1966. The LEIN Policy Council, Act 163 of the Public Acts of 1974, being 28.211 et seq. of the Michigan Compiled Laws, was established to oversee policy and promulgate rules regarding the operational procedures to be followed by agencies using LEIN, review applications for network access and approve or disapprove the applications, and establish minimum standards for sites and installation. In 1998, Executive Order 1998-1 combined the LEIN and Automated Fingerprint Identification System (AFIS) Policy Councils into the Criminal Justice Information Systems (CJIS) Policy Council. Act 309, effective February 1, 2006, created the CJIS Policy Council.

The CJIS Policy Council oversees the operation of LEIN. All applications for access to LEIN are reviewed and approved through the Council. Criminal justice agencies are assigned Originating Agency Identification Numbers (ORI) which track all inquiries into LEIN and the National Crime Information Center (NCIC). Without an ORI, an agency cannot access LEIN or NCIC files. Over the past 38 years, LEIN has proven to be an effective system, providing vast pools of information to the criminal justice community in the state and the nation. LEIN access has expanded from a limited group of law enforcement agencies to all criminal justice agencies in Michigan. Many courts use LEIN to directly enter and cancel wanted person records in a timely manner, as well as enter dispositions on criminal history records.

LEIN ACCESS

Criminal Justice agencies are allowed LEIN access in the performance of criminal justice duties. The LEIN Administrative Rules allow LEIN access to non-governmental agencies, which are statutorily vested with arrest powers and are engaged primarily in the administration of criminal justice. Furthermore, LEIN access is allowed for specific functions.

LEIN ACCESS AND USE BY AGENCY

1. ANIMAL CONTROL OFFICER – UNDER LAW ENFORCEMENT

The Animal Control Officer is allowed access only when under the direct jurisdiction and control of a law enforcement agency.

2. CRIMINAL JUSTICE AGENCIES

- Correctional Institutions
- Courts (Criminal Divisions only)
- Governmental Law Enforcement Agencies
- Pre-Trial Service Agencies
- Probation and Parole Agencies
- Prosecutors
- Attorney General

3. FRIEND OF THE COURT

The Friend of the Court is allowed access when the Sheriff's Department deputizes the requestor. In addition, the LEIN Policy Council Act, MCL 28.214, Section 4(1) has been amended to allow access to the Friend of the Court for the enforcement of child support programs, and reads as follows:

- (i) Ensure access to locator information obtained through the Law Enforcement Information Network by state and federal agencies and the friend of the court for enforcement of child support programs as provided under state and federal law.

4. FIRE DEPARTMENTS

Pursuant to the LEIN Policy Council Act, as amended and effective December 22, 1998, access to LEIN is allowed for an organized fire department chief or his or her designee for the purposes of:

- Preemployment background checks including:
 - a) Michigan criminal history record, convictions only
 - b) Michigan driving records
- Michigan vehicle registration information only for vehicles involved in a fire or hazardous materials incident.

Fire investigators who meet the following amended criteria are eligible for indirect access to Michigan LEIN information, using purpose code M and excluding NCIC information.

- The agency employs a full-time fire marshal or fire investigator who is not the head of the agency.
- The agency is a full-time, career municipal fire department.
- Access is requested by the chief officer of the fire department and the head of a law enforcement agency with jurisdiction.
- The agency's fire investigator has completed a two-week training course in fire investigation – either the Michigan State Police Fire Investigator's School or the National Fire Academy's Fire/Arson Investigation.

5. MICHIGAN DEPARTMENT OF COMMUNITY HEALTH (DCH) – SUBSTANCE ABUSE OFFICE

The Office of Substance Abuse Services, DCH, may access LEIN as part of a screening and assessment process, mandated by the Michigan Drunk Driving Law (SB 702), only if the assessing agency is a criminal justice agency (such as a Court Probation Office).

6. MICHIGAN DEPARTMENT OF NATURAL RESOURCES (DNR) – PARK OFFICERS

State Park Officers, pursuant to Act 268, P.A. 1982, may receive LEIN access. However, criminal history records and LEIN record entries must be made through the DNR District Headquarters, Law Enforcement Division.

7. MICHIGAN DNR – LAW ENFORCEMENT DIVISION

The Law Enforcement Division of the DNR is a criminal justice agency and is allowed full LEIN access.

8. MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC GROWTH (DLEG) – INVESTIGATION SECTION

The Investigation Section of DLEG is a criminal justice agency and is allowed full LEIN access. However, all other sections/offices of the DLEG are not criminal justice agencies.

9. MICHIGAN DEPARTMENT OF HUMAN SERVICES (DHS)

A. Office of the Inspector General

The Office of the Inspector General, DHS, is a criminal justice agency and is allowed full LEIN access.

B. Family Services Administration

The Governor's Executive Order 1990-10 authorizes certain individuals within the Family Services Administration of the DHS to access Michigan-only, conviction and non-conviction criminal history record information. These persons include:

- Authorized persons within the DHS who are responsible for the licensing and regulation of child or adult care homes, facilities or institutions.
- Authorized persons within the DHS who are responsible for the protection, care or placement of children in the custody of the court or the state.

In addition, the LEIN Policy Council Act, MCL 28.214, Section 4(1) has been amended to allow access to the DHS in the enforcement of the child protection laws, and reads as follows:

- (ii) Ensure access to information of an individual being investigated by a state or county employee who is engaged in the enforcement of the child protection laws or rules of this state.

C. MICHIGAN CHILD SUPPORT ENFORCEMENT SYSTEM (MICSES)

The MICSES accesses LEIN for the entry, validation, and cancellation of child support warrants.

10. PRIVATE SECURITY POLICE – WITH POWERS OF ARREST

Private Security Police Agencies meeting the powers of arrest and training requirements of Sections 29, 30 and 31 of Public Act No. 330 of P.A. 1968, as amended, and upon proper application, may be allowed access to Michigan conviction-only criminal history record.

11. PUBLIC HOUSING AGENCIES

Public Law (Pub. L.) 104-120, the Housing Opportunity Program Extension Act of 1996, requires law enforcement agencies to “upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, public housing for the purposes of applicant screening, lease enforcement, and eviction.”

12. PRIVATE OR PUBLIC SCHOOLS

Effective October 25, 2000, MCL 28.214, Section 4 of the LEIN Policy Council Act, was amended to allow limited LEIN access to a private or public school superintendent, principal, or assistant principal to receive vehicle registration information, of a vehicle within 1,000 feet of school property, obtained through LEIN by a law enforcement agency.

13. DRUG COURT

Access is permitted for LEIN information for the staff of the Family Dependence Drug Court Program (FDDCP) to receive LEIN information from a DHS caseworker as to whether the parents are non-violent offenders.

14. CIVIL PROCEEDINGS

(1) A user agency's message transactions may be released to another agency under any of the following conditions:

- (a) Upon written request from a county, state, or federal prosecuting attorney who shall specify that the information required is for a valid criminal justice purpose.

- (b) A search warrant or subpoena authorized by a judge.
 - (c) Upon approval of the agency which initiated the messages.
 - (d) The Executive Secretary may release CJIS audit information to facilitate investigations of misuse.
- (2) A user agency's message transactions may be released for non-criminal justice purposes under either of the following circumstances:
- (a) For employment related administrative hearings involving the misuse of CJIS information.
 - (b) Pursuant to a court order, in a civil proceeding where the misuse or accuracy of CJIS information is at issue.
 - (c) In either (a) or (b) the person requesting the information must agree to limit dissemination of CJIS information for the purposes of the hearing or civil action.

LEIN ACCESS AND USE BY FUNCTION

LEIN access is allowed for the specific functions listed below.

1. ADMINISTRATION OF CRIMINAL JUSTICE

Criminal history record checks that fall under the administration of criminal justice are authorized as follows:

A. Employees of a Criminal Justice Agency

Employment in criminal justice agencies and the screening of employees of other agencies over which the criminal justice agency is required to have management control.

B. Immigration Laws

Matters involving a violation of U.S. immigration laws including both criminal matters that can lead to criminal charges and administrative action that can lead to deportation. *Note: Background checks such as those leading to eligibility for citizenship or parenting of foreign children are not considered to be within the administration of criminal justice.*

C. Protective Services to Dignitaries

Protective services pertaining to the physical protection of authorized persons (dignitaries) both foreign and domestic. This principle extends to local officials for whom protection is provided and includes record checks on personnel to be present at the site of dignitary appearances.

D. Security of Prisons

The security of prison facilities to include, for example, record checks necessary to screen visitors, approve mail lists, and authorize vendors' access to facilities.

Note: Routine record checks on personnel and random checks of visitors at non-criminal justice facilities such as airports, shipyards, military installations, and most government buildings are not considered to be within the administration of criminal justice.

2. ADOPTION, CUSTODY, AND/OR SUPPORT OF CHILDREN

The LEIN Policy Council established a policy at its October 1985 meeting that states:

Any established criminal justice agency that has as part of its responsibilities, matters of adoption, custody and/or support of children, may access LEIN for investigative information that includes Criminal History Record information as a component of carrying out its duties. Said inquiries may not be disseminated beyond the original intent of the inquiry and shall not become part of the court file. Any misuse, personal use, or dissemination would be improper use, and would subject the agency and individuals to established sanctions.

3. GAMING BACKGROUND CHECKS

Michigan-only Criminal History Record inquiries may be made through a tribal or state police agency and the Michigan Gaming Control Board for background checks on gaming employees.

4. LICENSING

Pursuant to the Governor's Executive Order 1990-10, authorized persons within an administrative agency of state government who are responsible for the enforcement and compliance with state regulated occupational or professional licenses or certificates may have criminal history record information. This provides Michigan-only conviction and non-conviction data. The Policy Council clarified in July 2004 that agencies required by state statute to check good moral character for licensing may continue to use LEIN purpose code M to do so. All other licensing requests required by city ordinance must use the Internet Criminal History Access Tool (ICHAT).

5. PARKING TICKETS

Parking Ticket Registration information requests by non-criminal justice agencies (such as the City Treasurer), which is a follow-up to a criminal justice action, may be considered to be reasonable requests. However, code enforcement employees that do not work for a criminal justice agency are not entitled to LEIN access prior to default on the parking violation. An employee of a criminal justice agency, such as a Parking Enforcement Officer working for the police department, has direct access to LEIN and Secretary of State (SOS) information.

6. PRIVATE BUSINESS – STATUS OF RECORD

A law enforcement agency may inquire into LEIN and NCIC and report the findings as to the status of stolen serialized property to a business or individual known to the agency and administratively approved with a signed agreement.

In ascertaining the location of an alleged stolen vehicle, the dissemination of the NIC number obtained from NCIC or the SYSID number to a private third party supporting law enforcement functions is permitted.

7. PRIVATE PERSON – STATUS OF RECORD

LEIN Administrative Rule 28.5211 provides for:

- (i) A private person to receive verbal information as to whether or not a warrant ordering his or her arrest has been issued by a court and entered into either LEIN or NCIC files; if he or she appears in person at a law enforcement user agency and is properly identified.

8. PROPERTY – STATUS OF RECORD

A law enforcement agency may inquire into LEIN and NCIC and report the findings as to the status of stolen serialized property to a business or individual known to the agency and administratively approved with a signed agreement.

9. WEIGH-MASTERS – UNDER LAW ENFORCEMENT

The Weigh-master Officer is allowed access only when under the direct jurisdiction and control of a law enforcement agency (county under the county sheriff office and city under the local police department). Indirect access to LEIN hot files and SOS information is allowed for Weight-masters provided they execute a written procedure and management control agreement with the public safety agency serving these positions, and requiring the agency to radio a certified officer or sworn deputy with any other information that may require law enforcement assistance.

LEIN SECURITY

The CJIS Security Policy was updated in 2006. It included interface specifications, personnel security requirements, and technical security requirements. The policy also includes minimum standards for encryption and firewalls.

MINIMAL SECURITY MEASURES

The following are the minimal security measures that must be adopted by agencies authorized to access LEIN and its related computer systems:

- **PROPER USE**

A LEIN agency or a satellite computer system interfaced to LEIN shall establish adequate physical security measures to protect against any unauthorized personnel gaining access to LEIN data. To ensure that LEIN and NCIC data is properly used and/or disseminated and to facilitate audit and investigative functions, the LEIN rules require that the LEIN operator's name, the name of the requester and the identity of his/her agency be included on all LEIN and NCIC inquiries.

- **NETWORK/SECURITY COORDINATOR**

The CJIS Policy Council and MSP Information Security Officer (ISO) shall ensure that each local agency having access to a criminal justice network have someone designated as the Local Agency Security Officer (LASO). The interfaced agency shall establish an information security structure that provides for a LASO. The LASO shall be an individual to act as Network/Security Coordinator who shall be the single point of contact between MSP and the agency on network security issues. The LASO shall manage the security responsibilities at the local agency level. This person shall be responsible for reporting security violations, coordinating start-up and upgrades to the network and applications, distributing training manuals and other publications to agency users, and preparing/submitting an agency security plan to the MSP ISO and the CJIS Policy Council for approval.

- **PERSONNEL**

Thorough background screening of personnel by the employing agency is required. Record checks shall be completed prior to employment or having access to Michigan CJIS information. State and national fingerprint-based record checks must be conducted within 30 days upon initial employment or assignment for all personnel, including appropriate IT personnel and other persons employed or utilized to effectuate access to or initiate transmission of CJIS information. New operators must attend a LEIN Basic class within the first six months of assignment.

- **VISITORS**

All visitors to computer centers and/or LEIN access areas must be accompanied by authorized personnel at all times.

- **COMPUTER SYSTEMS**

Computer systems having access to LEIN must have appropriate computer programming instructions written and other built-in controls to prevent LEIN data from being accessible to any user other than authorized criminal justice users. Satellite computer systems having access to LEIN must maintain a record of all transactions against the criminal history and other files of LEIN and NCIC in a similar manner as these systems log such transactions. Satellite computer systems linked to LEIN shall assume responsibility for system security with regard to all agencies which they service.

- **COMPUTER SITE**

Specific physical security standards must be met in instances where agencies access CJIS information. The computer site and/or workstation area must have adequate physical security to protect against any unauthorized viewing or access to computers, access devices, or stored/printed data at all times.

- **COPIES/FACSIMILIE USE**

The CJIS Policy Council established guidelines for the sending of LEIN obtained information via a facsimile (FAX) machine. These guidelines are as follows:

- * The sending and receiving agencies have ORIs authorized to receive criminal history information.
- * The receiving agencies must be notified by the sender prior to transmission.
- * Information should only be sent to a fax machine staffed by personnel authorized to access CJIS information.
- * A recognition of receipt is to be returned to the sender.
- * The sender is ultimately responsible for the security of the facsimile information.
- * Copies of LEIN printouts or unneeded LEIN printouts must be disposed of in such a manner as to assure confidentiality.

- **POLICY CONTRACT**

Each agency head must provide a current, signed written agreement to the CJIS Policy Council and the Department of State Police to conform to system policy before participating in CJIS records information programs. This agreement also includes the standards and sanctions governing utilization of CJIS systems and specifies that unauthorized request or receipt of data through CJIS could result in sanctions and/or criminal proceedings.

- **RESPONSIBILITIES**

It is the responsibility of the individual agencies for confidentiality of criminal justice information. All data associated with CJIS records shall be securely stored and/or disposed of to prevent access by unauthorized personnel. Any departure from these responsibilities warrants the removal of the offending agency from further system participation in order to protect all other users.

- **SECURITY COMPLIANCE**

Michigan must adhere to the provisions of the NCIC Security Policy, NCIC procedures and policies, and Title 28 of the Code of Federal Regulations, which relates to the “collecting, storing, or disseminating” of computerized criminal history information.

INFORMATION TECHNOLOGY CONSOLIDATION

EXECUTIVE ORDER No. 2002 - 2 transferred all information technology responsibilities from the Department of State Police to the Department of Information Technology (DIT). This included the transfer of the LEIN files and system from the Department of State Police to DIT. A separate mainframe computer is housed at DIT and is used exclusively for LEIN. DIT staff has responsibility to provide physical security and safeguards for LEIN data.

The CJIS Policy Council requires agencies to investigate all allegations of LEIN violations and reviews the actions taken by the agencies. The CJIS Field Services Section is responsible for auditing all LEIN agencies triennially for compliance to LEIN rules and policies as well as the NCIC policies. In 2007, training was suspended and agency auditing is being done by only one auditor, which does not meet the triennial site audit requirement.

The CJIS Policy Council Act states, in part:

Sec. 4. (1) The council shall do all of the following:

(a) Establish policy and promulgate rules governing access, use, and disclosure of information in criminal justice information systems, including the law enforcement information network, the automated fingerprint information system, and other information systems related to criminal justice or law enforcement. The policy and rules shall do all of the following:

(i) Ensure access to information obtained by a federal, state, or local governmental agency to administer criminal justice or enforce any law.

(ii) Ensure access to information provided by the law enforcement information network or the automated fingerprint identification system by a governmental agency engaged in the enforcement of child support laws, child protection laws, or vulnerable adult protection laws.

(iii) Authorize a fire chief of an organized fire department or his or her designee to request and receive information obtained through the law enforcement information network by a law enforcement agency for the following purposes:

(A) A preemployment criminal convictions history.

(B) A preemployment driving record.

(C) Vehicle registration information for vehicles involved in a fire or hazardous materials incident.

(iv) Authorize a public or private school superintendent, principal, or assistant principal to receive vehicle registration information, of a vehicle within 1,000 feet of school property, obtained through the law enforcement information network by a law enforcement agency.

(v) Establish fees for access, use, or dissemination of information from criminal justice information systems.

(b) Review applications for C.J.I.S. access and approve or disapprove the applications and the sites. If an application is disapproved, the applicant shall be notified in writing of the reasons for disapproval.

(c) Establish minimum standards for equipment and software and its installation.

(d) Advise the governor on issues concerning the criminal justice information systems.

(2) A person having direct access to nonpublic information in the information systems governed by this act shall submit a set of fingerprints for comparison with state and federal criminal history records to be approved for access pursuant to the C.J.I.S. security policy. A report of the comparison shall be provided to that person's employer.

(3) A person shall not access, use, or disclose nonpublic information governed under this act for personal use or gain.

(4) The attorney general or his or her designee, a prosecuting attorney, or the court, in a criminal case, may disclose to the defendant or the defendant's attorney of record information pertaining to that defendant that was obtained from the law enforcement information system.

(5) A person shall not disclose information governed under this act in a manner that is not authorized by law or rule.

(6) A person who intentionally violates subsection (3) or (5) is guilty of a crime as follows:

(a) For a first offense, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(b) For a second or subsequent offense, the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.